IN THE HIGH COURT OF JUDICATURE FOR RAJAASTHAN

AT JAIPUR BENCH JAIPUR.

O R D E R

Ahmed and anr. Vs. State

SB CRIMINAL MISC.PETITION NO.**2366/2006**
under Section 482 Cr.P.C.
Date of order :- **1/12/2006.**

HON'BLE MR.JUSTICE HARBANS LAL

Mr. M.C. Jain for the petitioners.
Mr. Arun Sharma P.P. for the State.

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BY THE COURT:-

The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (referred to in short 'the Code') is directed against the order dated 10/11/2006 passed by the learned Sessions Judge, Jaipur District, Jaipur in Misc.(Criminal) Bail Application No.1234/06 arising out of Cr.Case No.981/2006 pending in the court of learned Judicial Magistrate Chomu, Jaipur District, Jaipur.

The relevant facts giving rise to this petition and nessary for its disposal are that while allowing application on 10/11/2006 the application of the petitioners under Section 439 Cr.P.C. and directing their release on bail in the aforesaid case, learned Sessions Judge has imposed condition to the effect that they shall be released on bail on furnishing a personal bond each in the sum of Rs.50,000/- with two local solvent sureties of Rs.25,000/- each for their appearance before the court or the court to which the case is transferrred

on each and every date of hearing.

Learned counsel for the petitioners has contended that the direction to furnish local solvent sureties is unreasonable and unconscionable. It is so onerous as to deprive the petitioners of the benefit of bail altogether which is not the intendment of the legislature and is clearly against the pronouncement of the Hon'ble Apex Court in the case of **Moti Ram & Ors. Vs. State of Madhya Pradesh : [AIR 1978 SC 1594]**.

Learned Public Prosecutor also could not defend the direction with regard to furnishing of local solvent sureties.

I have considered the submissions and have perused the relevant provisions of the Code as well as the aforesaid authroity.

A bare perusal of the aforesaid order of the learned Sessions Judge, Jaipur District, Jaipur makes it apparent that the learned Judge has directed petitioners to furnish local solvent sureties which is against the law laid down by the Hon'ble Apex Court in the case of **Moti Ram & Ors. Vs. State of Madhya Pradesh (supra)** wherein it is clearly held that it is not within the power of the court to reject the surety because he or his estate situate in a differnt District or State. There is no law prescribing the geographical discrimination implicit in asking for sureties from the court district. So, the demand by the court of local sureties is arbitary, discriminatory and illegal. This apart, charge against the petitioners is alleged theft of Bollero vehicle for which a case for offences under

Sections 379 and 411 I.P.C. is said to be pending trial against them. Learned Sessions Judge has required them to furnish two sureties each in the sum of Rs.25,000/- which also appears to be excessive in the facts and circumstances and nature of alleged offences. Therefore, the order of the learned court below to that extent is not sustainable and deserves to be set-aside.

In the result, this petition u/S.482 Cr.P.C. is allowed. The direction given by the learned Sessions Judge, Jaipur District, Jaipur in his order dated 10/11/2006 to furnish two local solvent sureties is quashed and set-aside. It is directed that petitioners shall be released on bail on their furnishing a personal bond each in the sum of Rs.20,000/- with two sureties in the sum of Rs.10,000/- each to the satisfaction of the concerned Judicial Magistrate with the stipulatin to appear before the concerned trial court on each and every date of hearing untill conclusion of the trial unless otherwise directed.

(HARBANS LAL), J.

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